

**House File 2106 - Introduced**

HOUSE FILE 2106

BY MOMMSEN

**A BILL FOR**

1 An Act relating to a preference for the awarding of joint  
2 custody of a child to both parents.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 598.41, subsection 1, paragraph a, Code  
2 2016, is amended to read as follows:

3 a. The court ~~may~~ shall provide for joint custody of the  
4 child by the parties. The court, insofar as is reasonable and  
5 in the best interest of the child, shall order the custody  
6 award, including liberal visitation rights where appropriate,  
7 which will assure the child the opportunity for the maximum  
8 continuing physical and emotional contact with both parents  
9 after the parents have separated or dissolved the marriage,  
10 and which will encourage parents to share the rights and  
11 responsibilities of raising the child unless direct physical  
12 harm or significant emotional harm to the child, other  
13 children, or a parent is likely to result from such contact  
14 with one parent.

15 Sec. 2. Section 598.41, subsection 2, paragraph a, Code  
16 2016, is amended to read as follows:

17 a. ~~On~~ Notwithstanding subsection 1, paragraph "a", upon  
18 the application of either parent opposing joint custody, the  
19 court shall consider granting joint custody in cases where the  
20 parents do not agree to joint custody the factors specified in  
21 subsection 3 to determine if joint custody is reasonable and in  
22 the best interest of the child.

23 EXPLANATION

24 The inclusion of this explanation does not constitute agreement with  
25 the explanation's substance by the members of the general assembly.

26 This bill requires a court to provide for joint custody  
27 of the child by the parties. Current law provides that the  
28 court may provide for joint custody of the child. However, the  
29 bill does not change current law that provides if the court  
30 finds that a history of domestic abuse exists, a rebuttable  
31 presumption against the awarding of joint custody exists.

32 The bill also provides that, notwithstanding the required  
33 awarding of joint custody of a child, upon application  
34 of either parent opposing joint custody, the court is to  
35 consider factors specified in current law to determine if

1 joint custody is reasonable and in the best interest of the  
2 child. The factors include: whether each parent would be a  
3 suitable custodian for the child; whether the psychological  
4 and emotional needs and development of the child will suffer  
5 due to lack of active contact with and attention from both  
6 parents; whether the parents can communicate with each other  
7 regarding the child's needs; whether both parents have actively  
8 cared for the child before and since the separation; whether  
9 each parent can support the other parent's relationship with  
10 the child; whether the custody arrangement is in accord with  
11 the child's wishes or whether the child has strong opposition,  
12 taking into consideration the child's age and maturity; whether  
13 one or both the parents agree or are opposed to joint custody;  
14 the geographic proximity of the parents; whether the safety  
15 of the child, other children, or the other parent will be  
16 jeopardized by the awarding of joint custody or by unsupervised  
17 or unrestricted visitation; whether a history of domestic abuse  
18 exists; and whether a parent has allowed a person custody or  
19 control of, or unsupervised access to a child after knowing  
20 the person is required to register or is on the sex offender  
21 registry as a sex offender.

22 The bill continues current law requiring that if the court  
23 does not grant joint custody upon application of a parent  
24 opposed to joint custody, the court is required to cite clear  
25 and convincing evidence, pursuant to the factors specified,  
26 that joint custody is unreasonable and not in the best  
27 interest of the child to the extent that the legal custodial  
28 relationship between the child and a parent should be severed.  
29 The bill also continues current law that a finding by the  
30 court that a history of domestic abuse exists, which is not  
31 rebutted, shall outweigh consideration of any other factor in  
32 the determination of the awarding of custody.